

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL MEMORANDUM**

**SB 1787 – HB 2190**

April 18, 2018

**SUMMARY OF ORIGINAL BILL:** Expands the offense of second degree murder to include the unlawful distribution or dispensation of a controlled substance.

**FISCAL IMPACT OF ORIGINAL BILL:**

Increase State Expenditures - \$2,126,300 Incarceration\*

**SUMMARY OF AMENDMENT (017641):** Deletes and rewrites the proposed legislation to include the unlawful distribution, delivery, or dispensation of fentanyl, carfentanil or a combination of any controlled substance and fentanyl or carfentanil as second degree murder in instances in which the controlled substance was the proximate cause of death.

**FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Increase State Expenditures – \$374,100 Incarceration\***

Assumptions for the bill as amended:

- The Tennessee Department of Health reports that 1,631 Tennesseans died from drug overdoses in 2016, the highest annual number of such deaths recorded in state history. This is an increase from the 1,451 overdose deaths recorded among Tennessee residents in 2015.
- It is assumed that there is an average of 1,500 deaths from drug overdose each year in Tennessee.
- It is assumed that one percent ( $1,500 \times 0.01 = 15$ ) of these deaths can be tied to an unlawful distribution or delivery of a controlled substance or controlled substance analog.
- Of the 15 deaths that can be tied to an unlawful distribution or delivery of a controlled substance or controlled substance analog, it is assumed that 25 percent ( $15 \times .25 = 3.75$ ), or four of those are related to fentanyl, carfentanil, or controlled substances containing fentanyl or carfentanil.
- Further, it is assumed that one-half ( $4 \times 0.5 = 2$ ) of these will result in second degree murder Class A felony admissions.

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- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the proposed legislation.
- It is assumed that those admissions for second degree murder resulting from the proposed legislation would be convicted and serve time for delivery of fentanyl, or carfentanil, which is a schedule II controlled substance under Tenn. Code Ann. § 39-17-417. It is assumed that these offenders are serving no less than the average time served for a Class C felony.
- The average time served for a class A felony is 17.69 years. The average time served for a Class C felony is of 3.28 years.
- Offenders currently serving time for a Class C felony would serve an additional 14.41 years (17.69 – 3.28) for a Class A felony.
- According to the Department of Correction (DOC), 47.1 percent of offenders will re-offend within three years of their release. A recidivism discount of 47.1 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this proposed legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (2 offenders x .471 = .942 offenders).
- According to the DOC, the average operating cost per offender per day for FY17-18 is \$71.08.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender (2 offenders – 1 recidivism discount) serving 14.41 years (5,263.25 days) at a cost of \$374,112 (\$71.08 x 5,263.25 days).

*\*Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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